

COMPLAINT NUMBER	20/059
ADVERTISER	NZ Smokefree Tomorrow
ADVERTISEMENT	White Fox Radio
DATE OF MEETING	7 April 2020
OUTCOME	Not Upheld No further action required

Summary of the Complaints Board Decision

The Complaints Board did not uphold a complaint about a radio advertisement for White Fox nicotine pouches. The Board said the advertisement did not encourage or condone an unsafe practice or a disregard for safety.

Description of Advertisement

In the radio advertisement for White Fox nicotine pouches two men are driving. One of them asks if they can stop for a break. The other says “We’re only 40 minutes away, White Fox it!”

Summary of the Complaint

The Complainant was concerned the advertisement was irresponsible because it encourages a disregard for safe driving practices by promoting the use of artificial stimulants to overcome fatigue while driving.

Issues Raised:

- Social Responsibility
- Safety

Summary of the Advertiser’s Response

The Media responded, on behalf of the Advertiser. The Media said there is no indication that fatigue is an issue or that the person requesting the break is the driver. It is the passenger who is requesting a break, in order to stop and have a cigarette.

Relevant ASA Codes of Practice

The Chair directed the Complaints Board to consider the complaint with reference to the following codes:

ADVERTISING STANDARDS CODE

Principle 1: Social Responsibility: Advertisements must be prepared and placed with a due sense of social responsibility to consumers and to society.

Rule 1(e) Safety: Advertisements must not, unless justifiable on educational or social grounds, encourage or condone dangerous, illegal or unsafe practices, or portray situations which encourage or condone a disregard for safety.

Relevant precedent decisions

In considering this complaint the Complaints Board referred to two precedent decisions, Decision 19/267, which was Upheld and 19/342, which was Not Upheld.

The full versions of these decisions can be found on the ASA website:

<https://www.asa.co.nz/decisions/>

Decision 19/267 concerned a television advertisement for White Fox nicotine pouches. The text said: “Just put it under your top lip for a hit... Use it anywhere... All the buzz, none of the bad...Available in good stores”. To the left of the screen it said “18+”.

The Complaints Board was of the view that the location of the advertisement was inappropriate as 50% of the audience at the venue is under the age of 18. The advertisement was screened on Giggle TV at a café in an indoor sports centre.

Decision 19/342 concerned a radio advertisement for White Fox nicotine pouches. The voiceover for the advertisement included the following: “...White Fox nicotine pouches are ideal for settings where smoking is not acceptable. Put one under your lip and try it for yourself. All of the Buzz, None of the Bad. White Fox nicotine pouches. Available at all good stores. R.18”

The Complaints Board said the use of the phrase “All of the Buzz, None of the Bad” did not meet the threshold to undermine the health and well-being of individuals or to be considered misleading.

Complaints Board Discussion

The Complaints Board noted that it is legal to advertise nicotine pouches.

Consumer Takeout

The Complaints Board discussed the likely consumer takeout of the radio advertisement. The Board agreed there were two possible consumer takeouts.

The majority of the Complaints Board said the likely consumer takeout of the advertisement was you can use White Fox nicotine pouches instead of smoking. This means you don't have to stop driving, as there is no risk of producing passive smoke, which might affect your companion. The majority said there was no implication the man was using the nicotine pouch to stay awake enough to drive.

The minority of the Complaints Board said the consumer takeout of the advertisement was ambiguous but one possible meaning was you can use White Fox to get a nicotine hit to help you stay awake while you are driving. This is so your trip won't be delayed by taking a break, either to take a rest or to smoke a cigarette.

Audience

The Complaints Board noted the target audience for Newstalk ZB listeners 30-60 year olds.

Does the advertisement encourage or condone an illegal or unsafe practice or portray a situation which encourages or condones a disregard for safety?

A majority of the Complaints Board said the advertisement did not reach the threshold to encourage or condone an unsafe practice or a disregard for safety. The majority said there is nothing in the advertisement to indicate the man is requesting a break because he is tired. The majority said the inclusion of the phrase “White Fox it!” did not encourage an unsafe practice.

A minority disagreed. The minority said the advertisement did encourage an unsafe practice. This is because the man uses a nicotine pouch to get a nicotine hit. While it is not clear from the advertisement which man is the driver, it is possible to assume it is the passenger who says: "White Fox it!" to the driver. He says this because the driver is tired and he wants them to keep driving, instead of taking a break. The minority said there is a greater risk of accidents occurring if people drive when they are fatigued.

Is the advertisement socially responsible?

A majority of the Complaints Board said the advertisement was socially responsible, taking into account context, medium, audience and product. This is because the advertisement did not encourage or condone an unsafe practice or a disregard for safety.

A minority disagreed. The minority said the advertisement was not socially responsible because it does encourage or condone a disregard for safety.

In Summary

In accordance with the majority the Complaints Board ruled the advertisement did not encourage an unsafe practice and was socially responsible. The Board ruled the advertisement was not in breach of Principle 1 or Rule 1(e) of the Advertising Standards Code.

Outcome

The Complaints Board ruled the complaint was **Not Upheld**.

No further action required

APPEAL INFORMATION

According to the procedures of the Advertising Standards Complaints Board, all decisions are able to be appealed by any party to the complaint. Information on our Appeal process is on our website www.asa.co.nz. Appeals must be made in writing via email or letter within 14 calendar days of receipt of this decision.

APPENDICES

1. Complaint
 2. Response from Media, on behalf of Advertiser
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Appendix 1

COMPLAINT

The advertisement I am complaining about relates to White Fox Nicotine Pouches. In the advertisement two young males are obviously driving in a vehicle when the passenger asks if they can stop for a break. The driver says "we are only 40 minutes away...White Fox it!"

This is irresponsible advertising as it is encouraging young people to disregard safe driving practices and using artificial stimulants to overcome fatigue. It has widely been advertised by authorities that a major cause of vehicle accidents is drivers being fatigued while driving.

This advertisement does not appear to meet the guidelines of Rule 1(e) Safety under Principle 1: Social Responsibility of the Advertising Standard Code in that it encourages unsafe driving practices and therefore should be removed from publication.

Appendix 2

RESPONSE FROM THE MEDIA, ON BEHALF OF THE ADVERTISER

We are writing on behalf of NZME (the publisher) and White Fox (the advertiser).

The ASA has identified Advertising Standards Code - Rule 1(e); Principle 1 as applying.

Principle 1: Social Responsibility: Advertisements must be prepared and placed with a due sense of social responsibility to consumers and to society.

Rule 1(e): Advertisements must not, unless justifiable on educational or social grounds, encourage or condone dangerous, illegal or unsafe practices, or portray situations which encourage or condone a disregard for safety

The advertisement does not encourage or condone a disregard for safety

The complainant states the following:

This is irresponsible advertising as it is encouraging young people to disregard safe driving practices and using artificial stimulants to overcome fatigue. It has widely been advertised by authorities that a major cause of vehicle accidents is drivers being fatigued while driving.

However, the message from the advertisement is that the passenger, speaking to the driver, asks if they can pull over (ostensibly for a cigarette break). The response from the driver is that they are only 40 minutes from their destination, and suggests White Fox instead (a product that does not create passive second-hand smoke inhalation).

There is no indication that fatigue is an issue, nor that the person requesting a break is the driver.